AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 534. 230.

WILLIAM L. SNYDER, EXECUTOR OF DAVID L. SNYDER, DECEASED, PLAINTIFF IN ERROR,

vs.

BERNARD BETTMANN, COLLECTOR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JANUARY 31, 1902.

(18,387.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 22, 1902.

* * * * * * *

1-12 And afterwards, to wit, on the 3rd day of December, A. D. 1900, the following amended petition was filed in the clerk's office of said court clothed in the words and figures following, to wit:

WM. L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff,
vs.
BERNARD BETTMANN, Collector, Defendant.
} No. 5375.

Amended Petition.

13 The plaintiff, having first obtained leave of the court, files this his amended petition herein, and says:

That he is the duly appointed, qualified and acting executor of the last will and testament of David L. Snyder, deceased, late of Clark county, Ohio, which last will and testament has been duly admitted to probate in said county, and is recorded, in vol. — page — of the wills records thereof.

That the defendant is the duly appointed, qualified and acting collector of the United States internal revenue for the first district of the State of Ohio.

The plaintiff further says that the said David L. Snyder died seized, among other real and personal property, of two hundred thousand ($200,000.00) dollars face value of United States Government bonds which were, at the date of the death of the testator, and also on April 20th, 1899, of the market value of two hundred and twenty thousand ($220,000.00) dollars, at which sum the same were appraised upon the inventory of the said David L. Snyder's estate; and in and by his said last will and testament the said David L. Snyder did give and bequeath unto the city of Springfield, a municipal corporation of the State of Ohio, authorized by the laws of Ohio to accept such bequest, said two hundred thousand ($200,000.00) dollars face value of United States Government bonds, in trust for purposes of purely public charity, to wit: in trust to manage and invest the principle thereof in such manner as the laws of Ohio direct, or might direct, in case of guardians of minors; and to use and expend the net income arising from said trust, in the maintenance, improvement and beautifying of the public park of said city, known as Snyder park, including any extensions
14 thereof which said city might otherwise acquire; and the said bequest has been duly accepted by the said city.

Plaintiff further says that the said defendant, as collector, demanded of the plaintiff, among other taxes, taxes on the said bequest to the city of Springfield under and by virtue of section- 29, 30 and 31 of an act of the Congress of the United States, approved June 13th, 1898, and entitled "An act to provide ways and means to meet war expenditures and for other purposes;" which said taxes

so demanded of the plaintiff by the said defendant amounting to twenty-seven thousand, five hundred ($27,500.00) dollars, being at the rate of 12½ % on the said value of the said bequest to the city of Springfield, have been paid by the plaintiff.

The said defendant has since refunded to the plaintiff five thousand five hundred ($5,500.00) dollars of the amount so wrongfully collected; but still retains the sum of twenty-two thousand ($22,000.00) dollars thereof.

The plaintiff before the payment of said taxes, or any part thereof, duly protested against the payment of the same or any part thereof, upon the grounds, among others, hereinafter more specifically set forth; but his said protest was denied, both by said collector and by the Commissioner of U. S. Internal Revenue, to whom the same was referred; and thereafter upon the 20th day of April, 1899, the said plaintiff under protest paid to the said defendant as collector, among other taxes the said sum of twenty-seven thousand, five hundred ($27,500.00) dollars as taxes upon the bequest aforesaid.

Immediately after making the payment aforesaid the plaintiff duly prepared and submitted to the Commissioner of the United States Internal Revenue, a claim in writing for the refunder of the same, and of each and every part thereof, upon the grounds,
15 among others, hereinafter specifically set forth; but the said claim of the plaintiff for refunder has been rejected and denied by the said Commissioner of Internal Revenue to the extent of the said sum of twenty-two thousand ($22,000) dollars, still retained as aforesaid.

The plaintiff further says that the said sum of twenty-two thousand ($22,000) dollars so retained, and each and every part of the same, was illegally collected by the said defendant for the reason that the Congress of the United States has no authority under the Constitution to impose any tax or burden upon the said city of Springfield, nor upon its exercise of the right to take said bequest under the will aforesaid, nor upon the said bequest to the said city of Springfield or any part thereof.

Wherefore the plaintiff prays judgment against the said defendant as collector for the sum of twenty-two thousand ($22,000.00) dollars with interest thereon from the 20th day of April, 1899.

By BOWMAN & BOWMAN,
His Attorneys.

STATE OF OHIO, }
Clark County, } ss:

Wm. L. Snyder being first duly sworn says that he is the executor of David L. Snyder, deceased, the plaintiff in the foregoing action, and that the facts stated in the foregoing amended petition are true as he verily believes.

W. L. SNYDER.

Sworn to before me and subscribed in my presence, this 28th day of November, 1900.

E. O. BOWMAN.

16 And afterwards, to wit, on the 3rd day of December, A. D. 1900, the following demurrer was filed in the clerk's office of said court clothed in the words and figures following, to wit:

Demurrer.

WM. L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff,
vs.
BERNARD BETTMANN, Collector, Defendant. } Demurrer.

The defendant demurs to the amended petition filed herein, for the reason that the same does not state facts sufficient to constitute a cause of action.

WM. E. BUNDY,
Attorney for Defendant.

And afterwards, to wit, on the 28th day of December A. D. 1901, the following opinion was filed in the clerk's office of said court clothed in the words and figures following, to wit:

On Demurrer to Amended Petition.

WILLIAM L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff,
vs.
BERNARD BETTMANN, Collector, Defendant. } No. 5375.

17 David L. Snyder bequeathed to the city of Springfield, Ohio $200,000, in United States Government bonds, "in trust to manage and invest the principal thereof in such manner as the laws of Ohio direct, or might direct, in case of guardians of minors, and to use and expend the net income arising from said trust, in the maintenance, improvement and beautifying of the public park of said city known as Snyder park, including any extension thereof which said city might otherwise acquire."

The defendant, Bernard Bettmann, as collector of internal revenue for the first district of Ohio, collected from the plaintiff, the executor of David L. Snyder, because of this bequest, an inheritance tax under the war-revenue law of 1898, and which the executor paid under protest, and afterwards applied to the Commissioner of Internal Revenue to have refunded; but the Commissioner of Internal Revenue refused the application and this action is now brought to recover the amount of said tax, upon the ground that the law which authorized its levy and collection is in contravention of the Constitution of the United States.

It is urged, in substance, that the legacy is property, of the city of Springfield, devoted to the legitimate purposes of municipal government, and therefore non-taxable. But in view of the Supreme Court of the United States, as expressed in Knowlton *vs.* Moore, 178 U. S. 41; Plummer *v.* Coler, *ibid.* 115; Murdock *vs.* Ward, *ibid.*

139, the tax is not levied upon the legacy but, upon the
transmit the legacy from the deceased to the city of Sp
through the agencies provided by the laws of Ohio, and it
become the property of the city of Springfield until this t
is taken out during the process of transmission. A
18 not been levied upon the property either as the pr
the estate of David L. Snyder or as the property of
of Springfield, but a duty or charge has been levied upon t
of David L. Snyder, for the privilege of transmitting the
to the city of Springfield. This right or privilege of trans
is a subject of taxation, within the reach of either the na
State government.

Knowlton *vs.* Moore, 178 U. S. 58, *et seq.*

The case of The United States *vs.* The Railroad Company,
322 does not support the contention of the plaintiff because
ject of taxation there was an investment which the city of B
had duly made in pursuance of the laws of the State of M
The demurrer will be sustained and the petition dism
plaintiff's costs.

And afterwards, to wit, on the 28th day of December, A.
the following entry was made upon the journal of said court
in the words and figures following, to wit:

Journal 6, p. 363.

Demurrer Sustained.

This day this cause came on to be heard upon the amen
tion of the plaintiff and the general demurrer filed thereto
defendant. After and upon due consideration thereof the co
said demurrer to be well taken and the same is accordi
tained; and the plaintiff not desiring to plead further, it is t
adjudged that the petition be, and said cause is, hereby di
And it is further adjudged that the defendant recover f
plaintiff his costs herein expended, taxed at $—.

To all which orders, rulings and judgments of the co
plaintiff duly excepted.

19 And afterwards, to wit, on the 6th day of Januar
1902, the following petition for writ of error was filed
clerk's office of said court, clothed in the words and figures
ing, to wit:

WILLIAM L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff, *vs.* BERNARD BETTMAN, Collector, Defendant. } At Law. No. Petition for Writ

William L. Snyder, executor of David L. Snyder, decease
tiff in the above-entitled action, feeling himself aggrieved
order of the court upon the defendant's demurrer to the p

amended petition, and by the judgment entered in this action on the — day of December, 1901, comes now by J. E. Bowman, his attorney, and petitions said court for an order allowing said plaintiff to prosecute a writ of error to the honorable the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the said plaintiff shall give and furnish upon said writ of error.

And your petitioner will ever pray.

J. E. BOWMAN,
Attorney for Plaintiff.

20 And afterwards, to wit, on the 6th day of January, A. D. 1902, the following assignment of errors was filed in the clerk's office of said court clothed in the words and figures following, to wit:

Assignment of Errors.

WILLIAM L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff, *vs.* BERNARD BETTMAN, Collector, Defendant.	At Law. No. 5375. Assignment of Errors.

Comes now the plaintiff in the above-entitled action and files the following assignment of errors upon which he will rely in his prosecution of the writ of error in the above-entitled cause:

1.

That the United States circuit court in and for the western division of the southern district of Ohio, erred in sustaining the demurrer interposed by the defendant to the amended petition filed by the plaintiff in this action.

2.

That the said court erred in its ruling upon said demurrer that the said amended petition of the plaintiff did not state facts sufficient in law to constitute a cause of action against said defendant.

3.

That the said court erred in rendering judgment against the plaintiff in said action upon the pleadings therein, and that said judgment is contrary to law and the facts as stated in the plaintiff's amended petition in said action.

21–29 Wherefore the said plaintiff and plaintiff in error prays that the judgment of the said court be reversed, and such directions be given that full force and efficacy may enure to the

plaintiff by reason of the facts set up in his amended petition filed in said action.

J. E. BOWMAN,
Attorney for W. L. Snyder.

* * * * * * *

30 In the Supreme Court of the United States.

WILLIAM L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff in Error,
vs.
BERNARD BETTMAN, Collector, Defendant in Error. } Law. No. —.

Statement by plaintiff in error of errors on which he intends to rely and of the parts of the record which he thinks necessary to be printed.

The plaintiff in error here states that the only error on which he intends to rely is the error of the circuit court in sustaining the demurrer of the defendant to the amended petition of the plaintiff below, (now plaintiff in error here) and in holding that the said amended petition did not state facts sufficient in law to constitute a cause of action and in rendering judgment on the said pleadings in favor of the defendant in error (defendant below) and against the plaintiff in error.

The plaintiff in error further states that the only parts of the record necessary for the consideration of said error are the following:

The amended petition (page 12 *et seq.* of Record); the demurrer thereto (Record page 16); the court's opinion on said demurrer (Record page 16 *et seq.*); the judgment entry on said demurrer (Record page 18): petition for writ of error (Record page 19): and assignment of errors (Record page 20).

Plaintiff in error requests that all other parts of the record be omitted in the printing thereof.

J. E. BOWMAN,
Att'y for Pl'ff in Error.

31 FEBRUARY 1ST, 1902.

It is stipulated and agreed by the parties that the record in the foregoing action shall be printed in accordance with the foregoing statement of the plaintiff in error.

J. E. BOWMAN,
For Plaintiff in Error.
J. K. RICHARDS,
Solicitor General, for Defendant in Error.

32 [Endorsed:] Supreme Court of United States Wm. L. Snyder, executor of David L. Snyder, deceased, plaintiff in error

vs. Bernard Bettman, collector, defendant in error. Statement by plaintiff in error, of errors relied on and parts of record to be printed, and stipulation for printing accordingly.

33 [Endorsed:] File No. 18387. Supreme Court U. S. October term, 1901 Term No. 534 Wm. L. Snyder, ex'c'r &c. pl'ff in error *vs.* Bernard Bettmann, collector &c. Statement of errors and stipulation as to printing record Filed M'ch 17, 1902.

Endorsed on cover: File No. 18,387. S. Ohio C. C. U. S. Term No. 534. William L. Snyder executor of David L. Snyder deceased, plaintiff in error, *vs.* Bernard Bettmann, collector. Filed January 31st, 1902.